IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Shyam Lal @ Radhey Shyam Vs. State of Rajasthan
(D.B. Criminal Appeal No.623/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 5-7-2001 in Sessions Case No.96/1991 passed by Shri K.K.Gupta, RHJS, Special Judge, SC/ST (PA Cases) Kota.

Date of Judgment: May 25, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Ravi Kasliwal, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Shyam Lal @ Radhey Shyam, the appellant herein, was put to trial before the learned Special Judge SC/ST (PA Cases) Kota, who vide judgment dated July 5, 2001 convicted and sentenced the appellant under Section 302 IPC to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer imprisonment for three months.

2. The prosecution case is that on March 1, 1991 informant Sheo Bux Bairwa (Pw.5) submitted a written report at Police Station Chechat to the effect that on the said day around 5.30-6 PM when he, his brothers Manna Lal and Birdhi Lal came to the field of Nathu Ram Patel he found that Shyam Lal and Ratan Lal were consuming liquor. When he asked Ratan Lal as to what they were doing, Ratan Lal hurled abuses Birdhi Lal rushed to

home and informed about the incident to his wife Ramnathi and son Ram Kumar, thereupon they also reached at the place of incident. During the course of altercations Ratan Lal gave lathi blows on the person of informant and Ram Kumar that caused injury over the left eye. Radhey Shyam in the meanwhile inflicted knife blow on the abdomen of Manna Lal, who while taking to the hospital died on the way. On that report case was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge SC/ST (PA Cases) Kota. Charges under sections 302/34, 323 IPC and Section 3(2)(5) SC/ST (PA) Act were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 13 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard the submissions and weighed the material on record.

4. Death of Manna Lal was indisputably homicidal in nature. As per Post Mortem Report (Ex.P-24) following ante mortem injuries were found on the dead body:-

1. Stab wound 1 x ½ x viscera deep upto dorsum over epigastrium
2. Abrasion 1 x 1 over left knee

In the opinion of Dr. Ashok Kumar Jain (Pw.16) the cause of death was excessive hemorrhage.

5. The fact situation that emerged may be summarized as under:-

(i) Appellant was consuming liquor with Ratan Lal, which was objected to by Sheo Bux and altercations ensued.
(ii) During the course of altercations the appellant under the effect of liquor inflicted single knife blow on the person of Manna Lal.

6. On a close scrutiny of the material on record we find that the incident occurred all of sudden and on a spur of moment. Since appellant Shyam Lal inflicted only one blow under intoxication of liquor and did not repeat the same it can be inferred that he did not behave in a cruel or unusual manner. At best Shyam Lal can be said to have knowledge that the blow inflicted by him was likely to cause death of Manna Lal, even though he had no intention of causing death or such bodily injury as is likely to cause death. Therefore the appellant Shyam Lal is found guilty of the offence punishable under Part II of Section 304 IPC.

7. For these reasons, we partly allow the appeal and instead of section 302, we convict the appellant under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period of six years and six months, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. The appellant Shyam Lal, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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